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No. 90-947

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In The

Supreme Court of the United States

October Term, 1990

ELLING O. EIDE,

Petitioner,

vs.

SARASOTA COUNTY,
a political subdivision of
the State of Florida,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

REPLY BRIEF

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In opposing certiorari, the County avoids the question before the Court and offers misstatements and arguments which ignore the mandate of Rule 52(a) and the clearly erroneous doctrine.[1]

The issue is clear: The Court of Appeals ignored the District Court's findings of fact, which were supported by the record, and erroneously reversed the District Court. Indeed, in its brief in this Court, the County does not claim that the District Court's findings that the County had reached a final decision, that the sector plan had been applied to Eide, and that pursuing rezoning to commercial would be futile were clearly erroneous. Rather, the County incorrectly claims the District Court made no findings. In attempting to characterize the District Court's findings as conclusions of law, the County has disregarded *Pullman-Standard v. Swint*, 456 U.S. 273, 286 n.16 (1982) (discussion of unreviewable findings of

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[1] Eide does not care whether anyone believes that he once had respectable academic credentials, but he does object to the County's implication (footnote 1) that he would lie about his background. As the record clearly shows, before returning to Sarasota County on leave of absence in 1971, he was an assistant professor of Chinese at the University of Illinois. [R.4, p. 29] Prior to that he had been a lecturer for the University of Maryland Extension and a teaching fellow at Harvard University. [R.4, p. 28-29] Eide continues to serve as an editor and translator and is currently president of the T'ang Studies Society. [R.11, p.113] It is true that the majority of Eide's income is derived from the lease on a piece of property (there is only *one* shopping center), but Eide has never subdivided or developed any property and has never bought any property on speculation. He still owns the only three pieces of property he has ever bought. [R.11, p.112].

fact). The County also continues to disregard the 1983 amendments to Rule 52(a) that the District Court may orally state its findings of fact, and it continues to ignore the District Court's findings at pages 45-50 of Eide's Appendix.

None of the cases cited in the County's brief involved Rule 52(a) or the clearly erroneous doctrine. Because the issue here is the Court of Appeals' failure to apply the clearly erroneous doctrine to three specific findings of fact, and because the County includes virtually no record citations in its brief, it is unnecessary to point out all of the County's misstatements. Two misstatements do, however, relate to the District Court's findings of fact. First is the County's claim that Eide attempted to circumvent the local land development approval process. Eide participated in more than 10 hearings during the sector planning process, at the conclusion of which, as the District Court found, the County made a final decision concerning Eide's properties. Second is the County's claim that the District Court observed that it was an open question whether commercial zoning of Eide's property might be consistent with an in-fill theory. [County Brief at 9]. *That was not the District Court's observation.* The District Court specifically found that no testimony supporting this contention was put forward. [Eide Appendix at 47-48].

In the end, the County goes on to argue that the Court may ignore Rule 52(a) in this case because its restriction was clearly rational, and that the restriction was clearly rational because the development of Eide's 33 acres would increase the number of daily trips on U.S. 41 from 28,000 to 46,000. [County Brief at 8, 11]. The record fails to support the County's argument, and the argument

defies logic and common sense. If all the thousands of acres of commercial development along six miles of U.S. 41 – including a 90 acre regional shopping mall across the street from Eide's property – generate only 28,000 trips per day, it is irrational to suggest that Eide's 33 acres would add 18,000 trips per day to highway traffic.[2]

Whether the County had reached a final decision, *whether* the sector plan had been applied to Eide, and *whether* it would have been futile to have proceeded with a rezoning petition are questions of fact. The District Court found that the County had reached a final decision, that the sector plan had been applied to Eide, and that proceeding with a rezoning petition would have been futile. Neither the County nor the Court of Appeals has suggested that the District Court's findings were clearly erroneous. Thus, certiorari should be granted and the Court of Appeals' decision should be summarily reversed.

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[2] The County's continued attempts to justify the restrictions of Eide's property to be the only residential property for more than 6 miles on U.S. 41 are further indicia that the County had made a decision and that rezoning to commercial would have been futile, as the District Court specifically found.